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November 26, 2002

**By Electronic Filing**

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

*Re: Application by SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services, Inc., for Provision of In-Region, InterLATA Services in California; WC Docket No. 02-306 – Ex Parte Filing*

Dear Ms. Dortch:

This *ex parte letter* is submitted on behalf of AT&T Corp., and addresses several public interest and Section 272 arguments raised by SBC Pacific in its November 4, 2002 reply comments and in its November 14, 2002 ex parte presentation ("*SBC Public Interest ex parte*").

## I. PUBLIC INTEREST

SBC Pacific now asks this Commission to "disregard[]" as "a red herring" the findings made by the California Public Utilities Commission ("CPUC") that granting SBC Pacific's application would not be in the public interest.[1] It makes the extraordinary claim that the concerns of the CPUC are rooted wholly in "peculiarities of California law [that] have no significance for the Section 271 'public interest' inquiry," and that the Commission should therefore treat the CPUC's public interest evaluation "the same way it would treat the concerns of any other party."[2]

SBC's arguments are meritless and should be rejected. *First*, SBC's claim that the CPUC's public interest assessment may be disregarded as a "peculiarity" of state law unrelated to the federal public interest test is demonstrably false. Because the public-interest factors that the CPUC considered under state law (Cal. Pub. Utils. Code § 709.2) mirror the factors that Congress and this Commission have expressly stated are relevant to an assessment of the public interest under Section 271, the CPUC's public interest analysis is directly relevant here. *Second*, this Commission should

[1] Batongbacal Reply Aff. ¶ 13.

[2] Letter from C. Stretch to M. Dortch (Nov. 14, 2002), and attachments ("*SBC Public Interest ex parte*") at 4.

give substantial weight to the CPUC's analysis, particularly because the broader record before this Commission further supports this conclusion. *Third*, SBC has failed to take affirmative steps to demonstrate that 271 authorization would be in the public interest.

**1.** The factors relevant to Section 709.2 overlap those relevant to Section 271. SBC conceded the point in a recent brief filed with the CPUC. It stated "the four general provisions of § 709.2 parallel and, in SBC Pacific Bell's view, are subsumed by the more detailed provisions of the Act."[3] SBC could not reasonably contend otherwise.

First, the language of Section 709.2 reflects the language and factors relevant to the Section VIII(C) standard, both as adopted in the Modification of Final Judgment[4] and as interpreted by the D.C. Circuit,[5] which Congress expressly indicated was relevant to the evaluation of compliance with section 271.[6] Second, the Section 709.2 factors also overlap those factors that this Commission has stated are relevant to a determination of whether to grant a BOC's 271 application.

For example, in the *Michigan 271 Order*, the Commission stated that "we anticipate that we would examine a variety of factors in each case,"[7] and provided a list that was meant to be "merely illustrative, and not exhaustive, of the factors we may consider . . . ."[8] The Commission confirmed that its public interest analysis "will include an assessment of the effect of BOC entry on competition in the long distance market."[9] And significantly for this application, the Commission stated that "we would be *interested in evidence that a BOC applicant has engaged in discriminatory or other anticompetitive conduct, or failed to comply with state and federal telecommunications*

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[3] SBC Pacific Bell Telephone Company's Response To The Issues Raised In The Assigned Commissioner's Ruling Concerning Public Utilities Code § 709.2, CPUC Docket R.93-04-003 et al. (filed Oct. 15, 2002) 17; *id.* at 17-18.

[4] *Compare United States v. American Tel & Tel Co.,* 552 F.Supp. 131, 231 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983) (Section VIII(C) states that "[t]he [interLATA] restrictions imposed upon the separated BOCs . . . shall be removed upon a showing by the petitioning BOC that there is *no substantial possibility that it could use its monopoly power to impede competition in the market it seeks to enter*.") (emphasis added) *with* Cal. Pub. Utils. Code § 709.2(c)(4) ("No commission order authorizing or directing competition in intrastate interexchange telecommunications shall be implemented until the Commission has . . . . pursuant to the public hearing process . . . [d]etermined that there is *no substantial possibility of harm to the competitive intrastate interexchange telecommunications markets*." ) (emphasis added).

[5] *Compare United States v. Western Elec. Co.*, 900 F.2d 283, 297, 299 (D.C. Cir. 1990) (*Triennial Review*) (confirming that "[c]ross-subsidization is relevant under VIII(C ) insofar as it may be used to price below cost in the competitive market, and thereby unfairly to acquire power and impede competition in that market," and that "the manner in which the seven BOCs behave competitively against each other, AT&T, and other firms" may be considered.) *with* Cal. Pub. Util. Code § 709.2(c)(2), (3) (CPUC must consider whether "there is no improper cross-subsidization of intrastate interexchange telecommunications service" and whether "there is no anticompetitive behavior by the" LEC).

[6] The Joint Conference Report states that the language of § 271(d)(2)(A) (permitting Department of Justice to use "any standard" in providing its "evaluation") was intended to permit DOJ to use "the standard contained in section VIII(C) of the AT&T Consent Decree." Conference Report at 149, reprinted at 1996 U.S.C.C.A.N. at p. 161.

[7] *Michigan 271 Order* ¶ 391.

[8] *Id.* ¶ 398.

[9] *Id.* ¶ 388.

*regulations*."[10] Thus, SBC is simply blowing smoke when it claims that the "peculiarities of California law have no significance" for this Commission's public interest inquiry – to the contrary, they go to the heart of it.

Notably, the state's concerns regarding anti-competitive and unlawful conduct are of particular significance both for this application and for SBC's claim that state commission evaluations of public interest issues do not merit special weight from this Commission. The Commission has already stated that it will give weight to such state commission evaluations "in light of the nature and extent of state proceedings *to develop a complete record concerning the applicant's compliance with section 271 and the status of local competition*,"[11] and rightly so. For who better to opine about the degree to which the penalty plans and regulatory fines have in fact deterred a BOC's anti-competitive behavior in a given state than the state commission? The CPUC's concerns about SBC Pacific's anticompetitive behavior and the need to protect against SBC Pacific's incentive and ability to harm long distance competition, and its inability to conclude that SBC Pacific's entry is in the public interest, are directly relevant to this Commission's public interest evaluation, and should receive substantial weight.[12]

As AT&T has elsewhere shown in detail, state commissions have repeatedly commented on the extent to which they believe that they have established a regulatory framework that will effectively discipline their BOC and "prevent any anticompetitive behavior."[13] This Commission, in turn, has repeatedly relied on those state submissions in concluding that evidence of a BOC's anticompetitive or unlawful conduct does not undermine confidence in the state commission's conclusion that the BOC will continue to comply with its market-opening obligations, and that the public interest test is satisfied.[14] Given the half-decade of proceedings over which the CPUC presided, its experience with Pacific Bell, and its detailed Decision and Findings of Fact, the CPUC's views are entitled to similar weight. The Commission therefore should reject SBC's effort to redirect the Commission's gaze anywhere but at SBC's pattern of non-compliance with state and federal telecommunications regulation and anticompetitive conduct, and should reject the application.

**2.** The CPUC had ample reason to conclude that interLATA authorization would not be in the public interest, and on the basis of the record in this proceeding, this Commission cannot

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[10] *Id.* ¶ 397 (emphasis added).

[11] *Michigan 271 Order* ¶ 30 (emphasis added); *see id.* (Commission "will consider carefully state determinations of fact that are supported by a detailed and extensive record," and "development of such a record" is "of great importance to our review of section 271 applications."); *see* AT&T Reply Comments 38-39 & nn. 148-55.

[12] The burden of showing full compliance with all aspects of section 271 rests at all times with the applicant BOC; this Commission "shall not approve" a section 271 application unless it determines that the applicant has carried its burden in all respects. See 47 U.S.C. § 271(d)(3)(A); *Second Louisiana Order* at ¶¶ 51-52. In that regard, the CPUC's finding that Pacific Bell had not carried its burden to show compliance with section 709.2's requirements both parallels and directly relates to SBC's failure to carry its burden to prove to this Commission that its application is in the public interest.

[13] TPUC Evaluation at 111, quoted in Letter from M. Haddad to M. Dortch at 10 & n.49 (November 26, 2002) ("*AT&T Ex Parte Letter Re: Meeting With Commissioner Martin*"); *see also* AT&T Reply Comments at 39-40.

[14] AT&T Reply Comments at 39-40; *AT&T Ex Parte Letter Re: Meeting With Commissioner Martin* at 8-11.

reasonably conclude otherwise. The broader evidence in this Commission's record only amplifies the CPUC's concerns.

SBC's Reply Comments begin by misrepresenting the CPUC's decision and the DOJ's evaluation of it. SBC wrongly asserts both that "a majority of the California CPUC did not support that conclusion" (that interLATA authorization is not in the public interest), and that DOJ "recognized" this in its Evaluation.[15] To the contrary, DOJ stated, correctly, that "the California PUC was unable to determine that SBC had satisfied the requirements of [Section 709.29(c)], pertaining to whether its entry into intrastate interLATA service would be consistent with the public interest."[16]

SBC's *public interest ex parte* (at 3) also misleadingly minimizes the significance of the CPUC's findings. For example, SBC fails to note that the CPUC: (1) rejected SBC's view that CLEC concerns about SBC's anticompetitive conduct amount merely to "a series of past occurrences, anecdotal complaints and disgruntled policy views," and found instead "that the record contains more than that," including "findings of anticompetitive conduct" in two federal court cases;[17] (2) observed that new rules were needed "to protect customers from [Pacific's] abusive marketing practices," including those "described by a CLEC witness";[18] (3) found that that an audit of competitor complaints about high levels of intraLATA toll PIC (LPIC) disputes was necessary and that SBC "failed to offer any assurance that it would perform its LPIC role with any safeguards of neutrality or sensitivity to competitor concerns";[19] (4) found a need for an audit of potential "cross-subsidization" in light, *inter alia*, of documents "that purport to show inappropriate [costing] allocations";[20] (5) found that SBC "generally scoffed" at concerns about its incentive and ability to act anti-competitively;[21] and (6) expressed concern about how effective mere dollar penalties under the "performance incentive plan" would be in preventing anticompetitive behavior, noting that "Pacific was *silent* as to the inference that we should take from the millions of dollars that SBC's affiliates have paid to the FCC for variously failing to meet the required performance obligations under the Ameritech Merger Conditions."[22]

This Commission now has additional evidence that validates the CPUC's concerns. With respect to SBC's pattern of anticompetitive conduct and non-compliance with state and federal

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[15] SBC Reply Comments at 37.

[16] DOJ Eval. 4; *see id.* at 4 n.12. SBC's implicit reliance on DOJ's footnote description of the separately expressed views of individual Commissioners is unavailing, both because the transcript of CPUC proceedings that SBC itself submitted with its public interest *ex parte* demonstrates that the public interest finding was adopted by a four-to-one vote (s*ee SBC Public Interest Ex Parte, Att. 2, Tr. at 64-65*), and because the separately expressed views of the individual commissioners in any case confirm that a majority supported the substantive findings as to the public interest (*see Dissent of Comm'n Pres. Lynch*).

[17] *Id* .at 254-56 (ALJ/JAR/tcg).

[18] *Id.* at 257 (ALJ/JAR/tcg).

[19] *Id.* at 260, 261 (COM/GFB,JAR/tcg).

[20] *Id.* at 257, 258 (COM/GFB,JAR/tcg).

[21] *Id.* at 252 (COM/GFB,JAR/tcg)

[22] *Id.* (emphasis added).

regulation, the record before this Commission shows that: (1) SBC was fined a maximum $6 million in an order entered during the pendency of this application by this Commission for "willfully and repeatedly" violating its merger obligation to provide shared transport for intraLATA toll service[23]; (2) SBC is repeating its misconduct by sticking to a "negotiating position"[24] with respect to UNE-combinations that is both (a) *frivolous* (because SBC lost on this issue both in the Ninth Circuit and in the United States Supreme Court, and has since had its position rejected by both the CPUC and the district court), and (b) *a continuation of the conduct that led to the shared transport forfeiture* because, in the language this Commission used in the *SBC Forfeiture Order,* SBC's refusal to acquiesce in its loss before the Supreme Court "forces competing carriers to expend time and resources in state proceedings trying to obtain what SBC was already obligated to offer"[25]; (3) SBC may be repeating its misconduct for which it was penalized in the *SBC Forfeiture Order* also with respect to shared transport for intraLATA toll in California[26]; (4) the CPUC fined Pacific Bell a then-record $25.5 million (on September 20, 2001) for marketing abuses, emphasizing that Pacific's "serious violations" of law were "compounded by the fact that Pacific Bell [previously] engaged in similar conduct" where it was fined $16.5 million;[27] (5) the CPUC then approved an even larger $27 million fine for conduct that included failing accurately to report – by an order of magnitude -- to the CPUC the thousands of customer complaints it received about its DSL service;[28] (6) the CPUC was unable to set cost-based permanent rates because of SBC's "delaying tactics" in the cost proceeding, which SBC has tacitly conceded;[29] (7) SBC is now attempting to coerce states into abandoning cost-based rates by threatening deep job cuts unless UNE rates are set at levels that preclude use of the platform, and has admitted that it agreed only temporarily to lower UNE rates in California so as to "speed" approval of its § 271 application, and will now seek to raise those rates;[30] (8) the CPUC has received an audit report from a consultant it retained that documents extraordinary levels of cross-subsidization and a massive failure to comply with state accounting requirements; and (9) SBC is refusing to implement the CPUC's joint marketing safeguards, even though this Commission has (a) never held such safeguards to be

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[23] *SBC Forfeiture Order* at ¶¶ 1, 24.

[24] SBC Reply Comments at 36.

[25] *SBC Forfeiture Order* at ¶ 24.

[26] See Declaration of Eva Fettig, submitted with *AT&T Ex Parte Letter Re: Meeting With Commissioner Martin*; see also *ex parte* letters and reply comments submitted by Telscape.

[27] See AT&T Comments at 77-78 & nn. 246-49 (citing CPUC Marketing Practices Decision); AT&T Reply Comments at 43 n.171. SBC notes that the $25.5 million fine was later "reduced" to a mere $15.225 million, and continues to argue its case against the penalty even now, claiming that it "agrees" with dissenting commissioners who allegedly thought that the fines were "too harsh" and "unwarranted." Batongbacal Reply Decl. at ¶¶ 8, 9. As noted below, SBC's unwillingness even now to accept responsibility for its marketing abuses underscores the validity of the CPUC's concerns that fines are not enough to deter future SBC misconduct.

[28] See AT&T Comments at 76-77 & nn. 242-44 (SBC Pacific reported zero complaints and eight complaints during periods when it was receiving thousands).

[29] *CPUC 2002 271 Decision* at 124; see AT&T Reply Comments at 7 & n.5.

[30] See Letter from C. Shenk to M. Dortch (filed November 26, 2002) at 3-4 and n. 6 ("*AT&T pricing ex parte*) (providing sources).

preempted, (b) SBC has not petitioned this Commission to so rule, and (c) any such petition would lack merit.

Finally, and most recently, SBC is now seeking to impede both local and long distance competition in California through false and misleading advertising that disparages AT&T and WorldCom by accusing them of redlining neighborhoods and not "offering their low rates to everyone." *See* Attachment 1 hereto. Such obviously false and misleading advertising, designed to poison its chief competitors' reputation, demonstrates the extraordinary lengths to which SBC is prepared to go to preserve its monopoly, and provides conclusive proof, if any more were needed, that SBC's pattern of anti-competitive conduct is entrenched and immune to correction through financial penalties alone.

The CPUC also expressed serious concern about the threat that interLATA authorization presents to intrastate long distance competition. Those concerns were based upon (1) the "anemic" state of local residential competition;[31] (2) SBC's continued monopoly over DSL service;[32] (3) evidence of SBC's marketing abuses and the lack of adequate constraints on improper joint marketing;[33] (4) evidence of abuse of SBC's role as LPIC administrator and SBC's failure to respond constructively to the CPUC's concerns;[34] and (5) evidence of cross-subsidization and the need for an audit.[35] Once again, the record before this Commission only amplifies these concerns. It shows that SBC (1) is attempting to terminate all UNE-platform based residential competition through (a) denying competitors new UNE-combinations, (b) raising UNE-platform rates, and (c) linking job cuts to UNE-P rates; (2) is maintaining its DSL monopoly and driving out competitors through an unlawful price squeeze,[36] as well as by evading its resale requirement; (3) is refusing to implement the CPUC's joint marketing safeguards; and (4) is unable to refute the independent consultant's findings of cross-subsidization on the merits.

Finally, the record in this proceeding confirms the CPUC's findings in one further respect. The CPUC repeatedly noted its concern about SBC's defiance and uncooperative behavior concerning the allegations of anticompetitive conduct and non-compliance with state and federal law.[37] SBC is equally defiant in its comments and declarations here. It refuses even to acknowledge the *SBC Forfeiture Order* or its relation to its "negotiating position" on new UNE combinations, and treats other issues with disdain, just as it did before the CPUC.[38] It therefore gives competitors and this Commission no reason to conclude that the fines levied to date have changed its behavior and will prevent future anticompetitive conduct and non-compliance with state and federal telecommunications regulation.

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[31] *CPUC 2002 271 Decision* 264.

[32] *Id.* at 220.

[33] *Id.* at 252-58 (ALJ/JAR/tcg), 251-52, 256-58, 266-67 (COM/GFB,JAR/tcg).

[34] *Id.* 260-66 (COM/GFB,JAR/tcg).

[35] *Id.* at 256-58.

[36] Letter from J. Young to M. Dortch (Nov. 26, 2002) ("*AT&T DSL Price Squeeze ex parte"*).

[37] *E.g., CPUC 2002 271 Decision* at 252 (COM/GFB,JAR/tcg).

[38] *AT&T Ex Parte Letter Re: Meeting With Commissioner Martin* at 14-15.

**3.** Finally, the record before this Commission also shows that SBC has failed to take the steps that SBC can easily take, and should take, before this Commission could reasonably decide that approval of SBC Pacific's application is in the public interest. For example, conspicuously absent from this record is any evidence that SBC has: (1) dropped its legally untenable and anticompetitive "negotiating position" on new UNE combinations; (2) allayed concerns that shared transport for intraLATA toll service is available in California; (3) implemented the CPUC's joint marketing requirements; (4) terminated its DSL price squeeze and met its DSL resale obligation; (5) ended Pacific's cross-subsidization of its long-distance affiliate; (6) fixed its program of improper winbacks of CLEC customers that prompted the CPUC's neutral-PIC-administrator investigation; and (7) agreed not to threaten states that set UNE rates that permit use of the UNE-platform with disproportionate job cuts. All of these are steps that SBC can readily take and should take to demonstrate that it has broken its pattern of anticompetitive conduct and non-compliance with telecommunications regulations, that it is no longer treating fines as a cost of doing business, that local competition in California is sustainable, and that Pacific's interLATA authorization will not harm long distance competition, but will serve the public interest.

## II. SECTION 272 COMPLIANCE

Pacific's reply comments are largely unresponsive to AT&T's demonstration that the numerous and substantial problems identified in a recently completed audit of Pacific preclude any rational finding that Pacific and its section 272 affiliate will comply with section 272.[39] Instead of addressing the substantive issues raised by the audit report[40] – and providing the Commission with any basis for concluding that Pacific will comply with the requirements of section 272 – Pacific spends most of its time criticizing the audit and taking issue with AT&T's characterization of its findings.[41] These attempts to sidestep the significant 272 issues presented by Pacific's Application are unavailing. On the record presented in California, Pacific has failed to meet its burden of establishing section 272 compliance.

As AT&T demonstrated in its Comments, the audit uncovered blatant subsidization by Pacific of its unregulated affiliates, in contravention of core concerns of the Act that section 272 is designed to prevent. This included paying SBC "more than $400 million annually for 'use of the corporate name'"[42] – a classic case of improper subsidization because use of the SBC name has no positive value for Pacific in California.[43] Significantly, Pacific does not deny either the fact or amount of these annual payments for use of the corporate name. Nor does Pacific deny what is self-evident – that it receives no value from these payments. Instead, Pacific's only response is that these payments are not something that it "has ever made secret" and that the payments "had no impact on regulated earnings or the prices paid by Pacific customers."[44] Neither point has any

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[39] AT&T Comments at 55-68.

[40] *Regulatory Audit of Pacific Bell For The Years 1997, 1998, and 1999*, Overland Consulting (hereinafter "Pacific Audit Report"), issued Feb. 21, 2002 and supplemented May 8, 2002 and June 20, 2002.

[41] Pacific Reply Comments at 53-57.

[42] Pacific Audit Report, S12-1 (June 20, 2002).

[43] AT&T Comments at 57.

[44] Pacific Reply Comments at 54-55.

bearing on the cross-subsidization issue. Accordingly, the unavoidable conclusion is that since 2000, Pacific has provided SBC with an improper subsidy of at least $400 million and potentially over $1 billion. On this basis alone, the Commission cannot find that Pacific and its section 272 affiliate will operate in compliance with section 272.

Similarly, Pacific does not deny the conclusion of the Pacific Audit Report that Pacific has "effectively transferred" its customer proprietary network information ("CPNI") to SBC's centralized marketing services affiliate, but that Pacific "has not been compensated for the transfer" of this valuable information – again resulting in an impermissible cross-subsidy.[45] Indeed, Pacific concedes that the SBC affiliate receives CPNI from Pacific in its capacity as a "sales agent."[46] Pacific's only response is that the transfer of CPNI is lawful, *i.e.*, consistent with joint marketing authority under section 272(g).[47] This response misses the point. Regardless of whether the transfer of information is permissible, it must be paid for because the information has significant value in avoiding otherwise massive customer-acquisition costs – a fact that Pacific does not (and could not) deny. By transferring the CPNI for free, Pacific has provided SBC with a significant, improper subsidy in an area (marketing) where it already has a significant advantage. Again, this blatant subsidization precludes any finding that Pacific and its section 272 affiliate will operate in compliance with section 272.

AT&T also noted that the Pacific Audit Report concluded that Pacific had underreported net regulated operating income to the CPUC by approximately $2 billion over the three-year period reviewed (1997-1999), allowing Pacific to avoid paying refunds to California consumers of approximately $350 million.[48] Although Pacific denies the $2 billion figure, even it concedes that it underreported its operating by $102 million.[49]

Rather than refute the substantive conclusions of the Pacific Audit Report, Pacific criticizes the Pacific Audit Report and argues that the Joint Federal/State Oversight Team's first Biennial Audit is the "best available evidence" with respect to section 272 compliance.[50] Pacific's attempt to focus the debate on which report is "best" is just a transparent attempt to shift the Commission's attention away from the fact that it has not refuted the substantive conclusions of the Pacific Audit Report.

AT&T also strongly disagrees with Pacific's assertion that the Joint Federal/State Oversight Team's first Biennial Audit is the "best evidence" of its compliance with section 272.[51] The Pacific Audit Report is more comprehensive, in terms of its size and detail, than the Biennial Audit report. Moreover, the Biennial Audit is currently the subject of public comment. In its comments (due December 30), AT&T will demonstrate in detail that the Biennial Audit was woefully inadequate,

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[45] Pacific Audit Report, S12-1 (June 20, 2002); *see* AT&T Comments at 58-59.

[46] Pacific Reply Comments at 55.

[47] *Id.*

[48] AT&T Comments at 56.

[49] Borsodi Reply Affidavit ¶ 9.

[50] Pacific Reply Comments at 54, 56-57.

[51] *Id.* at 56.

failing to conduct the proper inquiries and gather the evidence necessary to test fully Pacific's compliance with the key Section 272 requirements. But for present purposes, it is important to note that the Biennial Audit does not refute the conclusions of the Pacific Audit Report, because it does not address that Report's findings that are the subject of AT&T's comments. Indeed, it could not have done so, because the Pacific Audit Report is more recent than the Biennial Audit (the former was issued in February 2002 and has since been updated twice, while the Biennial Audit report is dated December 2001).[52]

In addition, as AT&T demonstrated, the Pacific Audit Report identified a series of efforts by Pacific to interfere with the audit, which substantially delayed its completion and made it impossible for the auditors to meet all the audit objectives.[53] Pacific does not refute its lack of cooperation with the audit. Instead, Pacific concedes that it took a different view of the proper scope of the audit and that that issue is the subject of ongoing litigation.[54]

Finally, Pacific fails to demonstrate that it will comply with Section 272 in other important respects. Rather than demonstrate that it has corrected the problems with its internal accounting controls to ensure compliance with, *e.g.*, affiliate transaction requirements,[55] Pacific lamely points to other aspects of its operations that were not criticized,[56] leaving the internal controls as inadequate as before. Similarly, Pacific claims merely that it is "lawful under the 1996 Act" for Pacific and its long distance affiliate to rely heavily on shared affiliates for most core operations,[57] without addressing the key questions regarding how transactions and support can be provided on an arms-length, non-discriminatory basis.[58] Finally, Pacific's reply comments reveal no intention, let alone action, to comply with the CPUC's joint-marketing guidelines.[59] Because this Commission has not preempted those rules, Pacific's unilateral defiance of these important Section 272-related obligations further precludes any finding that it will comply with Section 272.[60]

Respectfully submitted,

/s/ Mark E. Haddad
Mark E. Haddad

Enclosure

[52] Because the Pacific Audit Report was released in 2002 (and, in fact, post-dates the Biennial Audit report), there is no merit to Pacific's contention, *see* Borsodi Reply Aff. ¶ 7, that the Pacific Audit report "has no relevance" because it covered the period 1997-1999.

[53] AT&T Comments at 63-64.

[54] Pacific Reply Comments at 54; Borsodi Reply Aff. ¶ 13.

[55] *See* AT&T Comments at 61-62.

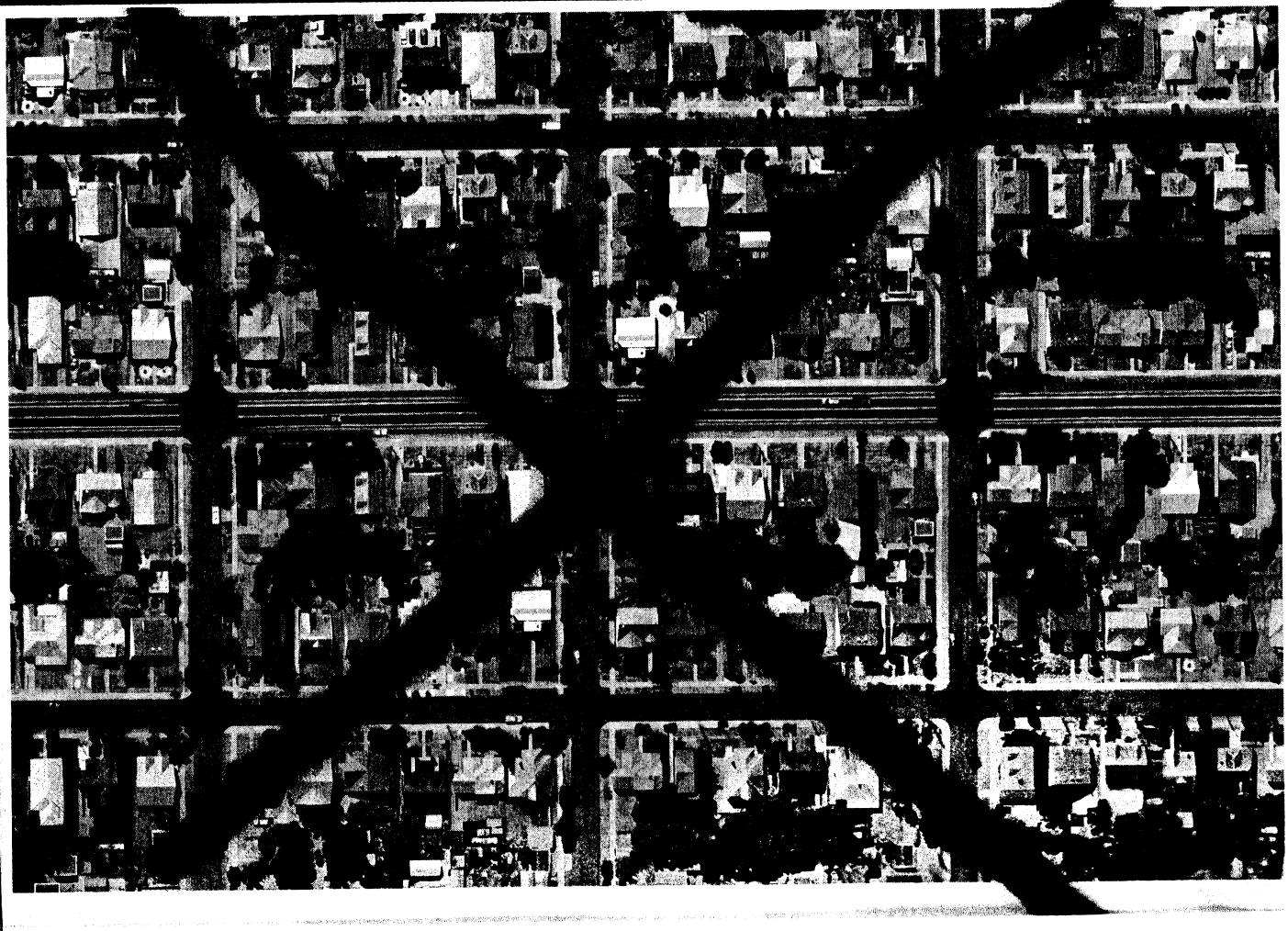
[56] Pacific Reply Comments at 55-56.

[57] *Id.* at 56 n.44.

[58] AT&T Comments at 61-62.

[59] Pacific Reply Comments at 42-43.

[60] AT&T Comments at 64-68.



# The "Neighborhood." Just not yours.

It appears that AT&T and MCI WorldCom are masquerading as friends of the neighborhood. Well, we have one word of advice. Beware. It's not the welfare of your neighborhood that they're interested in. Quite the opposite.

AT&T and MCI aren't offering their low rates to everyone. Instead, they seek out only the high-profit customers living and working in the more affluent neighborhoods. As a senior executive at AT&T recently asserted, it's a policy that extends beyond just the neighborhood: "We are not going into states where we don't have a gross margin of 45% on the local...."

On the other hand, SBC service is offered to everyone, in every neighborhood, in every region we serve. That's the way we do business. That's the way we've always done business.

When all is said and done, it's not competition that worries us. It's our competitors' business philosophies that will eventually compromise the networks and your service. No matter what neighborhood you live in.

SBC